

Amendment No. 1 to SB3989

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AMEND Senate Bill No. 3989

House Bill No. 3597\*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 47, is amended by inserting Sections 2 through 6 below as a new, appropriately designated chapter thereto.

SECTION 2. This chapter shall be known, and may be cited, as the “Tennessee Home Loan Protection Act.”

SECTION 3. As used in this chapter, unless the context otherwise requires:

(1) “Affiliate” means any company that controls, is controlled by, or is under common control with another company, as set forth in the federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, *et seq.*) as amended from time to time.

(2) “Annual Percentage Rate” means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. §1601, *et seq.*), and the regulations promulgated pursuant thereto by the federal reserve board (as said act and regulations are amended from time to time).

(3) “Bona fide loan discount points” means loan discounts points actually paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for the secondary mortgage market transactions.

(4) “Borrower” means a natural person obligated to pay a home loan, including a co-borrower, co-signer, or guarantor.

(5) “Construction loan” means a loan for the initial construction of a borrower’s principal dwelling on land owned by the borrower with a maturity of less than eighteen

(18) months that only requires the payment of interest until such time as the entire unpaid balance is due and payable.

(6) "Commissioner" means the commissioner of the department of financial institutions.

(7) "Department" means the department of financial institutions.

(8) "Lender" means any person who in the regular course of business makes a home loan. Lender shall also mean any person who for compensation or other gain, paid directly or indirectly, or in expectation of compensation or other gain, solicits, processes, places, negotiates or originates mortgage loans for others, or offers to solicit, process, place, negotiate or originate mortgage loans for others or who closes mortgage loans which may be in the mortgage loan broker's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans; regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers;

(9) "High-cost home loan" means a home loan in which the terms of the loan meet or exceed the rate threshold defined in subdivision (16) or the total points and fees threshold defined in subdivision (12).

(10) "Home loan" means a loan, in which

(A) The principal amount of the loan does not exceed the lesser of the conforming loan size limit for a single-family dwelling as established by the federal national mortgage association, or \$350,000;

(B) The debt is incurred primarily for personal, family, or household purposes; and,

(C) The loan is secured by a mortgage, deed of trust on real estate in this state upon which there is located or there is to be located a structure:

(i) Designed principally for occupancy by one (1) to four (4) families; and

(ii) That is or will be occupied by a borrower as the borrower's principal dwelling.

Home loan shall not include a residential mortgage transaction as defined in 12 CFR §226.2(a)(20), as amended from time to time; a reverse mortgage transaction as defined in title 47, chapter 30; and a construction loan as defined in subdivision (5).

(11) "Person" means any individual, corporation, partnership or trust, as the context may require.

(12)

(a) "Points and fees" means that term as defined in 12 CFR §226.32 and as used in the official staff commentary of the board of governors of the federal reserve system.

(b) For an open-end loan, "points and fees" means that term as defined in 12 CFR §226.32 and as used in the official staff commentary of the board of governors of the federal reserve system that are known at or before closing plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

(c) "Points and fees" excludes bona fide discount points.

(13) "Principal loan amount" is the total amount of money paid to, receivable by, or credited to the account of the borrower on which interest is to be computed.

(14) "Servicer" means any person who in the regular course of business assumes responsibility for servicing and accepting payments for a home loan.

(15) "Total loan amount" means the that term as defined in 12 CFR §226.32 and as used in the official staff commentary of the board of governors of the federal reserve system as the same may be amended from time to time .

(16) "Rate threshold" means the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" pursuant to §152 of the Home Ownership Protection Act of 1994, 15 U.S.C. § 1602(aa), and the

regulations adopted pursuant thereto by the federal reserve board, including 12 CFR §226.32, as amended from time to time

(17) "Total points and fees threshold" means the total points and fees payable by the borrower at or before the loan closing exceed:

(a) Five percent (5%) of the total loan amount if the total loan amount is more than thirty-five thousand dollars (\$35,000); or

(b) Eight percent (8%) of the total loan amount if the total loan amount is thirty-five thousand dollars (\$35,000) or less.

SECTION 4. The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of the existing loan or debt.

(2)

(A) No lender or servicer shall charge a fee for informing or transmitting to a borrower the balance due to pay off a high-cost home loan except as follows:

(i) If the lender provides the borrower at least annually a statement which includes the principal balance due on the loan as of a date certain, the lender may charge a reasonable fee for any balance inquiries in excess of one (1) per year.

(ii) If the lender does not provide a statement containing the balance due at least annually, the lender may charge a reasonable fee for any payoff amount that occurs less than six (6) months after any prior request.

(iii) The lender may require that any payoff request be sent in writing, by facsimile, or other electronic means, to a designated address or location and contain sufficient information to identify the loan, including

the name of the borrower as listed on the loan documents and loan number.

(iv) A payoff request that is not forwarded to the designated location or which does not contain sufficient information shall be deemed as an incomplete request.

(v) A lender or servicer may charge a reasonable fee to any third party request for payoff information, provided such request is authorized by the borrower.

(B) A request for payoff balance sent to the location designated by the lender or servicer shall be provided within seven (7) business days after a written, or other authorized request, is received by the lender and tender of any fee that is applicable.

(3) No lender or servicer shall charge a fee to provide a release upon prepayment of a high-cost home loan except for the actual cost paid to record the release.

(4) No lender shall make a high-cost home loan that refinances within twenty-four (24) months an existing home loan or high-cost home loan of the borrower when the new loan does not have a reasonable benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the economic and non-economic circumstances, the purpose of the loan, the cost of the new loan, and the borrower's circumstances.

(5) No lender shall make a high-cost home loan that finances, directly or indirectly, any single premium credit life insurance, as defined in §56-7-904(4), credit accident, credit disability, credit unemployment, credit property or health insurance, any other credit insurance product, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract. Nothing in this subdivision prohibits the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis or

prohibits bona fide credit property insurance required by the federal housing administration or the United States department of agriculture to be paid in a single premium to the respective federal agency. As used in this subsection, “credit property insurance” means property insurance written in connection with credit transactions under which the lender is the primary beneficiary.

(6)

(A) A borrower may not make a high-cost home loan unless the lender reasonably believes at the time the loan is made that one or more of the borrowers, when considered individually or collectively, will be able to make scheduled payments to repay the obligation based upon consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower’s equity in the dwelling which secures repayment of the loan).

(B) A borrower shall be deemed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the borrower’s total monthly debts as identified on the borrower’s credit report and as computed by the creditor’s methodology, including amounts owed under the loan, do not exceed fifty percent (50%) of the borrower’s gross income:

(i) As verified by the credit application, the borrower’s financial statements, tax returns, payroll receipts or third party income verification; and,

(ii) As underwritten in accordance with the lender’s underwriting guidelines and methodology.

(C) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor’s total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor’s monthly gross income.

(7) No lender may directly or indirectly finance, in connection with any high-cost home loan, any points or fees in excess of five percent (5%) of the total loan amount or, if the total loan amount is thirty-five thousand dollars (\$35,000) or less, an amount equal to eight percent (8%) of the total loan amount.

(8) A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan; provided, however, this provision shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the refinancing. For purposes of this subsection, additional proceeds shall be defined as the amount over and above the current principal balance of the existing high-cost home loan.

(9)

(A) No prepayment fees or penalties shall be provided in the loan documents for a high-cost home loan or charged a borrower after the last day of the thirty-sixth month following the loan closing or which exceed in the aggregate:

(i) In the first twelve (12) months after the loan closing, more than three percent (3%) of the loan amount prepaid;

(ii) In the second twelve (12) months after the loan closing, more than two percent (2%) of the loan amount prepaid; or,

(iii) In the third twelve (12) months after the loan closing, more than one percent (1%) of the loan amount prepaid.

(B) No prepayment fees or penalties shall be provided in the loan documents or charged a borrower in a refinancing of a high-cost home loan if the lender or an affiliate of the lender is the note holder of the note being refinanced.

(10) No lender shall make a high-cost home loan that contains a scheduled payment that is more than twice as large as the average of the earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of a borrower.

(11) No lender shall make a high-cost home loan that contains a payment schedule with regular periodic payments that cause the principal balance to increase.

(12) No lender shall make a high-cost home loan that contains a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due on sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.

(13) No lender shall make a high-cost home loan that includes terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(14) No lender shall make a high-cost home loan that contains a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or acceleration of the indebtedness.

(15) No lender shall make a high-cost home loan that provides for a late payment fee except as follows:

(A) The late payment fee shall not be in excess of five percent (5%) of the amount of the payment past due or ten dollars (\$10), whichever is greater;

(B) The late payment fee shall only be assessed for a payment past due for ten (10) days or more;

(C) The late payment fee shall not be imposed more than once with respect to a single late payment and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment but for the previous default or the imposition of the previous late payment fee.

(16) A lender may not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan other than:

(A) By an instrument payable to the borrower or jointly to the borrower and the contractor, or

(B) At the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the contractor prior to the disbursement.

(17) A lender shall not make a high-cost home loan unless the lender has given the following written notice, in at least twelve (12) point bold type, to the borrower, acknowledged in writing and signed by the borrower, not later than the time the notice provided by 12 CFR §Section 226.31(c) is required:

#### NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE LENDER WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) MAINTAINS A LIST OF CREDIT COUNSELORS IN YOUR AREA. YOU MAY OBTAIN HUD'S LIST OF CREDIT COUNSELORS BY

CONTACTING HUD DIRECTLY OR BY CONTACTING THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

(18)

(A) A lender may not present a borrower with a high cost loan at closing with materially different terms and conditions from the terms and conditions indicated on the last disclosures required by the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617) and the Truth-in-Lending Act (15 U.S.C. §§1601-1667e) and proceed to closing without acknowledgement of the differences and written approval of the material changes from the borrower.

(B) A high-cost home loan may not be closed in a location other than an office of the lender, at the office of any attorney at law licensed to practice in Tennessee, or at the office of a title insurance company or title insurance agency licensed to do business in Tennessee, or the commercial office of a mortgage broker.

(19) A lender or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a high-cost home loan to a nationally recognized consumer credit reporting agency.

(20) No lender shall make a high-cost home loan to any consumer if that consumer would otherwise qualify, based on the consumer's credit score, for a home

loan that is not a high-cost home loan. Each lender who makes a high-cost home loan shall maintain documentation in the consumer's file for the duration of the loan indicating the credit score of the consumer at the time the parties entered into the high-cost home loan.

(21)

(A) Each mortgage or deed of trust securing a high-cost home loan shall state on the face of the instrument the following legend prominently displayed: "This instrument secures a high-cost home loan as defined in Tennessee Code Annotated Title 47."

(2) Each note which meets the definition of a high-cost loan as defined in this chapter shall state on the face of the instrument the following legend prominently displayed:

"This instrument is a high-cost home loan as defined in Tennessee Code Annotated Title 47."

SECTION 5. No person shall, with the intent to avoid the application or provisions of the Home Loan Protection Act:

(1) Divide a loan transaction into separate parts; or

(2) Engage in any other subterfuge.

SECTION 6. It is unlawful for any party to a loan transaction to knowingly permit a borrower, lender, mortgage broker, loan originator, or third party to submit false or misleading information during the loan transaction; or to submit false or misleading information to any party to a loan transaction.

SECTION 7. If any provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision of or application, and to that end the provisions if this act are declared to be severable.

SECTION 8. This act shall take effect January 1, 2007, the public welfare requiring it.